Recr 16. '78. Argd N. H. Sem

76th 1 v 41
Oct 2. 1876

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~354.~~ 91

JAMES S. WELCH, APPELLANT,

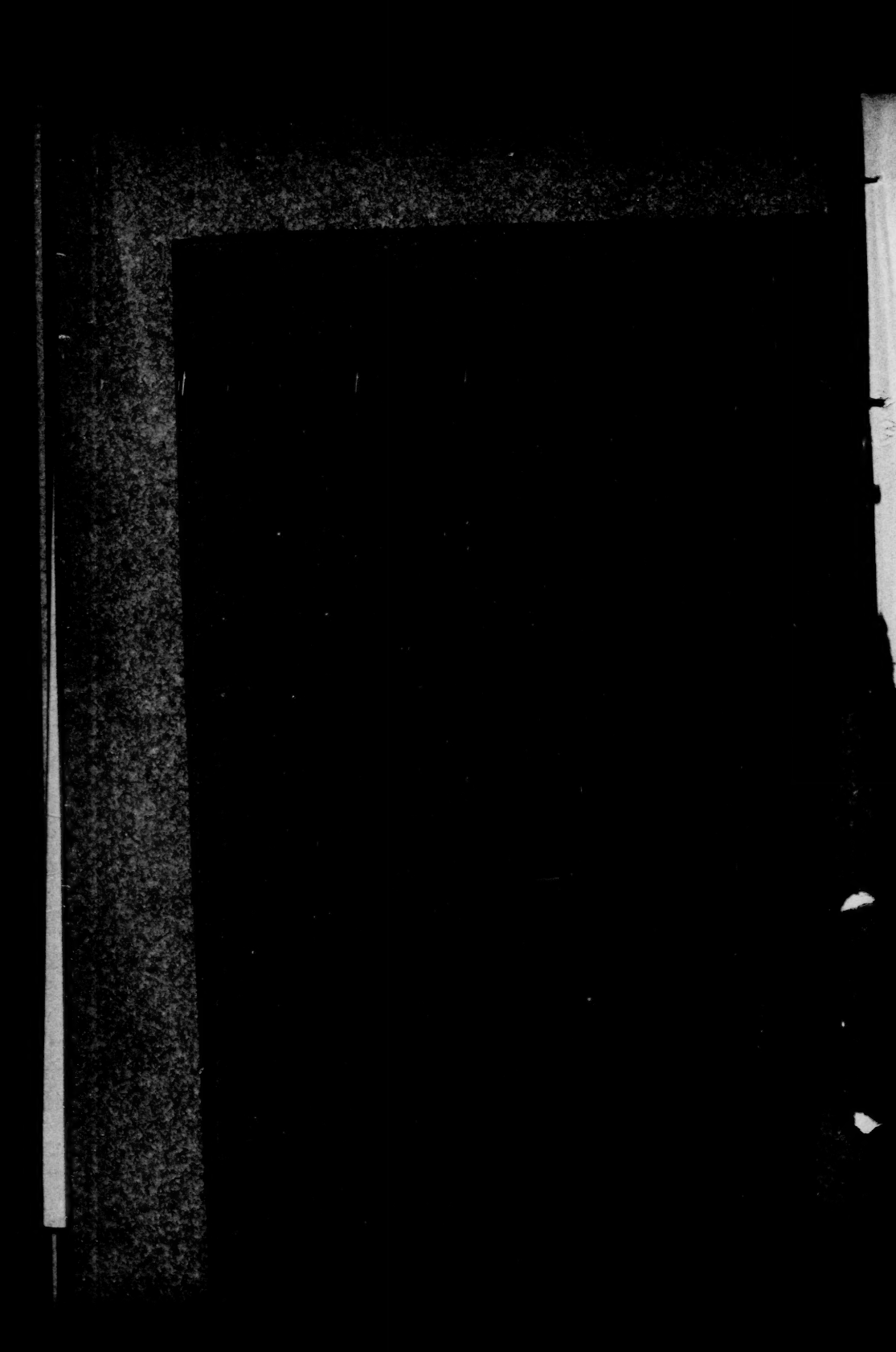
vs.

JOHN F. COOK, WILLIAM DENNISON, JOHN H. KETCHUM, AND SETH L. PHELPS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 8, 1876.

3 How 463. Carroll v Safford



SUPREME COURT OF THE UNITED STATES.

No. 354.

JAMES S. WELCH, APPELLANT,

vs.

JOHN F. COOK, WILLIAM DENNISON, JOHN H. KETCHUM, AND SETH L. PHELPS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print.
Bill of complaint	1	1
Bill of complaint, summons to answer	8	2
Restraining order	9	3
Demurrer to bill of complaint	10	3
Decree in special term	11	4
Decree in special term, appeal from	12	4
Appeal bond to general term	12	4
Decree in general term	13	4
Decree in general term, appeal from	14	5
Appeal bond to Supreme Court of the United States	14	5
Clerk's certificate	16	6

1 *Bill.—Filed June 25, 1875.*

In the supreme court of the District of Columbia this 25th day of June, A. D. 1875.

JAMES S. WELCH
vs.
JOHN F. COOK, WILLIAM DENNISON, JOHN H. Ketcham, Seth L. Phelps.

In equity. No. 4456. Docket 15.

The complainant states as follows:

1. That he is a citizen of the District of Columbia, and bring' this suit in his own right.

2. That defendant, John F. Cook, is collector of the District of Columbia, and is sued as such, and that the other defendants above named are sued as Commissioners of the said District of Columbia.

3. The complainant owns certain real estate in said District of Columbia, known and described as follows:

Peter Beattie, Threlkelds and Deakin's addition, part of 1 and
2 imp., beginning on the north side of Water street one hundred and thirty-four feet easterly from Fayette street; thence running north, parallel with Fayette street, to the south side of canal; thence westerly along said canal to Fayette street; thence south with Fayette st. to Water street; thence easterly one hundred and thirty-four feet to the beginning.

Peter Beattie, Threlkelds and Deakin's addition, part of 1 and imp. Welch, James S. Being the west one hundred and thirty-four feet front of said lot on the south side of Water street by the depth thereof.

Which real estate was, at the time of the assessment for fiscal year of 1874–'75, and is now, actually employed for manufacturing purposes exclusively, and that the value of the same exceeds the sum of five thousand dollars.

3 4. That the legislative assembly of the District of Columbia passed an act, which was duly approved on the 26th day of June, A. D. 1873, in substance as follows:

"All property, both real and personal, which may hereafter be actually employed within the limits of the District of Columbia for manufacturing purposes shall be exempt from all general taxes for a period of ten years from the date of this act going into effect: Provided, That the value of the property so employed for manufacturing purposes shall not be less than $5,000," which act is, as complainant is informed by counsel, and truly believes, a valid and subsisting law and still in full force and effect.

5. That in pursuance of said law, the said real estate above described was, by the direction of the Commissioners of said District of Co-
4 lumbia, stricken from the assessment rolls of the taxable property of said District, and no general taxes were levied or assessed thereon for the fiscal year ending June 30, 1874.

6. That on the faith of said act, and the contract therein expressed, complainant expended large sums of money in improving said property and extending his manufacturing facilities since the passage of said act.

7. That notwithstanding the premises, and although the said property had been stricken from the assessor's books as aforesaid, yet the said Commissioners, without any authority of law, as complainant is informed by counsel, and truly believes, did cause the said property to be assessed for the general taxes of said District for the fiscal year end-

ing June 30, 1875, which taxes so assessed and claimed amount
5 to the sum of $1,428\frac{30}{100}$, and the same not having been paid, the said defendant, John F. Cook, collector as aforesaid, has advertised the said property for sale in the "National Republican," a newspaper printed and published in said District, which sale is to be made on the 29th day of June, A. D. 1875, as will fully and at large appear by reference to said advertisement, a printed copy of which is herewith filed and made part hereof, and that said defendant, John F. Cook, collector as aforesaid, has advertised and is about to proceed to sell said property, on the day specified in said advertisement, to the highest bidder, at said auction, for the purpose of collecting said taxes, by which proceeding a cloud will be cast on complainant's title to said property.

All which acts and doings are contrary to equity and good con-
6 science, and tend to the manifest wrong and injuring of complainant in the premises, and inasmuch, therefore, as complainant has no adequate remedy at law, he prays:

1. That a writ of subpœna issue to defendants commanding them to appear and answer to this bill.

2. That they and each of them answer this bill and the allegations herein contained as fully as if here particularly interrogated.

3. That a writ of injunction issue from this honorable court restraining and enjoining the defendants from selling or attempting to sell the said property, or any portion of the same, under said advertisement, and from collecting, or attempting to collect, said taxes, which injunction is prayed to be made perpetual on the hearing of this cause,
7 and for such other or further order or decree as the court shall seem meet and proper.

JA'S S. WELCH.

W. D. CASSIN,
A. L. MERRIMAN,
Sol's for Comp't.

DISTRICT OF COLUMBIA,
County of Washington:

James S. Welch, complainant, on his oath, says that the forgoing bill is true except as to the matters on information and belief, and as to them he believes the same to be true.

JA'S S. WELCH.

Subscribed and sworn to before me this 25th day of June, 1875.
[SEAL.] F. W. JONES,
Notary Public.

8 *Subpœna to ans.—Issued June* 25, 1875. *Returned June* 26, 1875.

In the supreme court of the District of Columbia, June 25, 1875.

JAMES S. WELCH, COMPLAINANT,
against
THE DIST. OF COL'A ET AL., DEFENDANT. } No. 4456. Equity docket.

The President of the United States to the District of Columbia, W'm Dennison, J. H. Ketcham, & Seth L. Phelps, Com'rs D. C., John F. Cook, collector, defendants:

You are hereby commanded to appear in this court at its first special

term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Ass't Clerk.

9 *Restraining order.—Filed June 25, 1875.*

A bill praying an injunction restraining defendants from selling the real estate in the bill described, for purpose of collecting certain taxes, is this day filed. Hearing is fixed for the 8th July, 1875, at 10 o'clock a. m.

Until further order you are hereby restrained as prayed.

By order of the court.

A. WYLIE,
Justice, &c.

Attest:

R. J. MEIGS,
Clerk, &c.,
By L. P. WILLIAMS,
Ass't Clerk, &c.

Service on Dis't Columbia this June 26, 1875, acknowledged.

WM. BIRNEY,
Solicitor for Dist. of Col.

JOHN F. COOK,
Coll., D. C.

Marshal's return.

Sum'n'd & served notice for injunction on the Com'rs D. C. by their att'y, Wm. Birney, accepting service, & on John F. Cook, collector, &c. June 26, '75.

ALEX. SHARP,
Marshal.

10 *Def'ts' demurrer.—Filed July 14, 1875.*

In the supreme court of the District of Columbia, the day of July, A. D. 1875.

JAMES S. WELCH
vs.
JOHN F. COOK, WILLIAM DENNISON, JOHN H. Ketchum, Seth L. Phelps. } In equity. No. 4456.

The demurrer of William Dennison, John H. Ketchum, Seth L. Phelps, and John F. Cook to the bill of complaint of James S. Welch.

These defendants demur to the bill of complaint of the above-named complainant, and for cause of demurrer show that said complainant has not in and by his said bill made or stated such a case as does or ought to entitle him to any such relief as is thereby sought and prayed from and against these defendants.

11 Wherefore these defendants respectively demand judgment whether they shall be compelled to make any further or other

answer to said bill, and pray that the case may be hence dismissed with their reasonable costs in this behalf sustained.

EDWARD L. STANTON,
Att'y for the District.

Decree dismissing bill.—Filed July 16, 1875.

In the supreme court of the District of Columbia, the day July, A. D. 1875.

JAMES S. WELCH
vs.
WILLIAM DENNISON, JOHN H. KETCHUM, SETH L. PHELPS, JOHN F. COOK. } In equity. No. 4456.

This cause came on, by consent of counsel for the respective
12 parties, to be heard on the bill of complaint and the demurrer thereto, and, after argument of the counsel for the respective parties, it is thereupon, this 16th day of July, A. D. 1875, adjudged, ordered, and decreed that said demurrer be and hereby is sustained, and the bill of complaint be and hereby is dismissed, with costs; from which order the complainant, in open court, prays an appeal to the court in general term.

By the court.

A. W.

Un'ert'k'g for appeal to general term by compl't.—Filed July 29, 1875.

In the supreme court of the District of Columbia, the day of , 18 .

JAMES S. WELCH, PLAINTIFF,
vs.
WILLIAM DENNISON ET AL., DEFENDANTS. } No. 4456.

The plaintiffs having appealed to the general term from the decree pronounced herein on the 16th of July, 1875, in the equity court,
13 and David L. Shoemaker, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

The penalty of this bond is $100.

JAS. S. WELCH, [SEAL.]
Appellant.
D. L. SHOEMAKER, [SEAL.]
Surety.

Decree in gen. term. Dec. 4, 1875.

In the supreme court of the District of Columbia.

JAMES S. WELCH
vs.
W'M DENNISON ET AL. } In equity. No. 4456. Doc. 15.

This cause came on to be heard upon the record of the special

14 term, and was argued by counsel on both sides and submitted to the court on the 5th of October, 1875.

It is thereupon, this 4th day of December, 1875, ordered, adjudged, and decreed that the decree of the special term of July 16, 1875, from which this appeal was prosecuted, be, and the same is hereby affirmed with costs.

And the complainant, by his sol'r, here now prays an appeal to the Supreme Court of the United States, and the same is allowed.

Bond of appeal to Sup. C't U. S.—Filed Jan. 10, 1876.

In the supreme court of the District of Columbia, the day of , 18 .

JAMES S. WELCH, APPELLANT,
vs.
JOHN F. COOK, WILLIAM DENNISON, JOHN H. Ketchum & Seth L. Phelps, defendants.
} In equity. No. 4456. On appeal.

15 Know all men by these presents, that we, James S. Welch, A. Ross Ray, and J. F. Dodd, are bound unto the above-named defendants, who are sued, said Cook as collector of taxes, and the other defendants as Commissioners of the District of Columbia, in the sum of two thousand dollars, to be paid to the said defendants, their successors in office, executors, or administrators. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this day of January, 1876.

Whereas the above-named James S. Welch hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

16 Now, therefore, the condition of this obligation is, that if the above-named James S. Welch shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAS. S. WELCH. [SEAL.]
A. ROSS RAY. [SEAL.]
J. F. DODD. [SEAL.]

Sealed and delivered in presence of—
THO'S C. WHEELER.
W'M D. CASSIN.

Approved.

D. K. CARTTER,
Ch'f Just.

Clerk's certificate.

CLERK'S OFFICE,
Supreme court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file

and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 26th day of January, 1876.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 354. James S. Welch, appellant, vs. John F. Cook, William Dennison, John H. Ketchum, & Seth L. Phelps. District of Columbia sup. court. Filed 8th February, 1876.

UNITED STATES SUPREME COURT.

JAMES S. WELCH

vs.

JOHN F. COOK, et al.

A. L. MERRIMAN,
Appellant's Attorney.

R. O. Polkinhorn, Printer, Washington, D. C.

UNITED STATES SUPREME COURT.

JAMES S. WELCH

vs.

JOHN F. COOK, et al.

Brief of Appellant.

Appellant filed his bill in equity in the Supreme Court of the District of Columbia, alleging, in substance, that he owned certain property in said District, known as the Columbia Mills, worth over $5,000, actually employed for manufacturing purposes exclusively.

That the Legislative Assembly of said District passed an act, approved June 26, 1873, as follows:

"All property, both real and personal, which may hereafter be actually employed within the limits of the District of Columbia for manufacturing purposes, shall be exempt from all general taxes for a period of ten years from the date of this act going into effect; *provided*, that the value of the property so employed for manufacturing purposes shall not be less than $5,000;" which act is, as complainant is informed by counsel, and truly believes, a valid and subsisting law and still in full force and effect.

That in pursuance of said law, the said real estate, above described, was, by the direction of the commissioners of said District of Columbia, stricken from the assessment rolls of the taxable property of said District, and no general taxes were levied or assessed thereon for the fiscal year ending June 30, 1874.

That on the faith of said act, and of the contract therein expressed, complainant expended large sums of money in improving said property, and extending his manufacturing facilities since the passage of said act.

That said commissioners, in violation of law, caused said property to be assessed for general taxes for the year ending June 30, 1875, and for the non-payment thereof the defendant, Cook, collector of taxes, advertised said property for sale, and threatened to sell the same for such tax, thereby causing a cloud upon complainant's title thereto—the bill concluding with the usual prayer for relief and injunction.

A general demurrer was interposed to the bill, without stating any specific cause, as required by the rules of said court.

Upon hearing upon the bill and demurrer the bill was dismissed by decree of court.

There are two points involved in the record:

1st. As to the validity and effect of the legislative assembly.

2d. Has said act been repealed?

II.

As to the validity and effect of the act of the legislative assembly.

Sec. 18 of the act of Congress, under which the legislature was organized, provides, "That the legislative power of said District shall extend to *all rightful subjects of legislation* within said District consistent with the Constitution of the United States, and the provisions of this act, subject, nevertheless, to all the restrictions and limitations imposed upon states by the tenth section of the first article of the Constitution of the United States; but all acts of the legislative assembly shall at all times be subject to repeal or modification by the Congress of the United States, and nothing herein shall be construed to deprive Congress of the power of legislation over said District in as ample manner as if this law had not been enacted." 16 U. S. Stat., 419.

The power of raising revenues to support the Government is necessary for self preservation, and is one of the inherent powers of all municipal governments. Raising revenues by taxation is the ordinary mode of raising such revenues, and clearly comes within the power granted.

This power is recognized in section 14 of said act, which provides, "That such legislative assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the Government until the expiration of the first fiscal quarter after the adjournment of the next regular session; the aggregate amount of which * * * shall not exceed the amount of revenue authorized by law to be raised in such time * * * * * and no debt by which the aggregate debt of the District should exceed five per cent. of the assessed property of the District shall be contracted, unless, &c. Also, in section 20 of said act, which provides, "That the

legislative assembly shall not have power to pass any ex-post facto law, *nor law impairing the obligation of contracts, nor to tax the property of the United States, nor to tax the lands or other property of non residents higher than the lands or other property of residents, nor should lands or other property in said District be liable to a higher tax in any one year for all general objects, territorial and municipal, than two dollars on every one hundred dollars of the cash value thereof.*" The only limitation therefore imposed on the legislative assembly as to the power of taxation, was, that there should be no discrimination between residents and non-residents, and as to the rate of taxation.

We next come to the question, whether under the general powers thus conferred, the legislative assembly had the power to exempt any property or class of property in the District from taxation.

The object of the act is easy to understand. The manufacturing interest of the District was found to be comparatively neglected. It was known that if such inducements could be held out as would promote and establish manufactories in the District, advantages would flow and be derived by all classes of citizens, from the owner of real estate to the grocer and baker.

The act is in the nature of a contract, between the District and the appellant and such others as bring themselves within the provisions of the act; if he and and they will devote their property, to the value of $5,000, and upwards, exclusively to manufacturing purposes, such property shall be exempt from all general taxes for ten years.

The terms of the contract were accepted by appellant. He spent money in improving his property for the purpose, and devoted the same exclusively to manufacturing purposes. And the commissioners, in carrying out such contract on the part of the District, caused such property to be stricken from the assessment rolls of the taxable property of the District, and it so remained for one year.

These acts constituted a contract complete, so far as could be made.

There was a proposition by the District authorities, accepted by appellants, and subsequently affirmed by the District authorities, in striking the property from the assessment rolls for taxation.

In the case of *New Jersey* vs. *Wilson*, 7 Cranch, 164, the facts were, that in a settlement between the State and the Delaware tribe of Indians, the State purchased a tract of land for the use of the Indians, with a provision that such land should not thereafter be subject to any taxes. Subsequently the Indians applied for and obtained leave to sell their land and emigrate, and in accordance with such privilege the land was sold to divers citizens. Afterwards, such land being the property of citizens under such purchases, the legislature repealed the act exempting such land from taxation. It was held that the act of purchase by the State containing the exemption from taxation, was a contract binding upon the State and the property, even in the hands of the subsequent purchasers.

The same principle is decided in the case of *Gordon* vs. *Appeal Tax Court*, 3 How., 133. Gordon was a stockholder in the Union Bank of Maryland, chartered in 1804. Its charter being extended by the act of 1821, which provides that the charter of the several banks (including the Union Bank), be continued and extended to January 1, 1845, upon certain conditions one being, a subscription to a turnpike road specified; another condition, was, that the banks should annually pay to the treasurer twenty cents on every one hundred dollars of the capital stock of such bank actually paid in, and, "That upon any of the aforesaid banks accepting and complying with the terms and conditions of this act, the

faith of the State is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act, &c."

In April, 1841, an act was passed "for the general valuation and assessment of property in this State, and to provide a tax to pay the debts of the State;" directing, among other things, "that all stocks or shares owned by residents of this State in any bank * * * all stocks or shares in any bank, &c., should be assessed and a tax imposed, &c." It was held that this act amounted to a contract between the State, and the banks complying with the provisions of the act, and that the stockholders thereof were exempt from the tax imposed by the act of 1841; also, to the same effect:

Jefferson Bank vs. *Skelly*, 1 Black., 436.
Wilmington R. R. vs. *Reid*, 13 Wal., 264.
Providence Bank vs. *Billings*, 4 Peters, 514.
Dartmouth Col. vs. *Woodward*, 4 Wheaton., 518.
Binghamton Bridge, 3 Wal., 51.

In the case of *Humphrey* vs. *Pegrim*, 16 Wallace, 244, the court held that the legislature cannot tax the property of a corporation exempt therefrom by a previous statute, and add—"Another question is raised, to wit: that a legislature does not possess the power to grant to a corporation a perpetual immunity from taxation. It is said that the power of taxation is among the highest powers of a sovereign state, that the exercise is a political necessity, without which the state must cease to exist, and that it is not competent for one legislature by binding its successors to compass the death of the State. It is too late to raise this question in this court. It has been held that the legislature has the power to bind the state in relinquishing its power to tax a corporation. (*Jefferson Bank* vs. *Skelly*, 1 Black, 436.) It has been

held that such a provision in the charter of an incorporation constitutes a contract which the State cannot subsequently impair."

In the case of *Pine Grove* vs. *Tallcott*, 15 Wall., 676, it is held that the legislative power of a State extends to everything within the sphere of such power, except as it is restricted by the Federal constitution and that of the State.

McCullock vs. *Maryland*, 4 Wheaton, 316;
State vs. *Newburry*, 12 Rich., S. C., 339.

In the latter case it was provided in the charter of a village that all such lands and negroes as should be employed exclusively for agricultural purposes should be exempt from taxation. It was held that such lands and negroes, as were not so exclusively used, were taxable.

Neither in the organic act organizing the legislature of the District of Columbia, nor in the Constitution of the United States, is there any restriction as to the power of taxation except as contained in section twenty, above quoted. In the constitution of many of the States is incorporated a provision requiring *uniformity of taxation*. Upon this, Cooly says: "The constitutional requirements of equality and uniformity only extends to such objects of taxation as the legislature shall determine to be proper subjects to the burden and quotes—

State vs. *North*, 27 Mo., 464.
People vs. *Colman*, 3 Cal., 46.

The legislature, in the exercise of its discretion, is limited only by the constitution (Potter's Dwarris on Stat., 414, 421), neither is such discretion susceptible of review by the judiciary.

Sharpless vs. *State*, 21 Pa. Stat., R. 161, in which is used the following language: "The great powers given

to the legislature are liable to be abused. But this is inseparable from the natural human institutions. The wisdom of man has never conceived of a government with power sufficient to answer its legitimate ends and at the same time incapable of mischief. No political system can be made so perfect that its rules will always hold to the true course. In the best, a great deal must be trusted to the discretion of those who administster it. In ours, the people have given larger powers to the legislature, and relied for the faithful execution on the honesty and wisdom of the department, and on the direct accountability to their constituents. There is no shadow of reason for supposing that the mere abuse of power was meant to be corrected by the judiciary." Potter's Dwarris on Stat., 414, 421.

The power to determine the *persons and the objects* to be taxed, is trusted exclusively to the legislative department."

Wilson vs. *Mayo*, 4 E. D. Smith, 675.
Hill vs. *Higdon*, 5 Ohio, N. S. 245.
State vs. *Parker*, 33 N. J., 313.
Whitney vs. *Reysdath*, 33 Ind., 107.
Hodson vs. *New Orleans*, 21 La. An., 301.

The point is also made, that the act of the legislative assembly of the District of Columbia is without effect, except it is approved by Congress. The legislative assembly is, it is true, the creature of Congress, but, so are the legislatures of the territories of the United States. They have no powers except such as are granted by Congress.

The language of the act, organizing such legislative body, is, that such power shall extend to all rightful subjects of legislation * * * but all acts of the legislature shall at all times be subject to repeal or modification by Congress. In the acts creating the territorial govern-

ments of Oregon Territoryin 1848, of Washington Territory in 1853, it is provided, that all the laws passed by the legislatures of said territories shall be submitted to Congress, and if disapproved, shall be null and of no effect.

Washington territory has been organized for a period of over twenty years, and the legislatures have legislated upon all subjects except such as are specially probibited; judgments and decrees affecting persons and property have been rendered by the courts; men have been tried for crimes, imprisoned and hung, under the laws of the territory, and no question has ever been raised either in the courts or in Congress, of its power; nor has Congress, so far as I have been able to ascertain, ever exercised its prerogative of approving or disapproving the acts of the territorial legislature. It is clear that, with these long precedents before it, the grant of legislative power is considered complete; Congress reserving to itself the power of repeal or modification even in those cases.

In the organic act of the District there are no requirements of reporting the acts to Congress, for its approval or disapproval, as in the case of the territories named; but Congress merely reserves to itself the right to *repeal* or *modify*. Why repeal or modify an act if there is no valid act? The language used is inconsistent with the theory that the acts of the legislative assembly are not complete and effective, if within the "rightful subjects of legislation."

II.

Has the Act of June 26, 1873, been repealed?

It is contended that the 4th section of Act of Con-

gress approved June 20, 1874, and the 1st and 8th sections of the Act of Congress approved March 3d, 1875, operated as a repeal of said act of the legislative assembly of June 26, 1873.

The 4th section of Act of June 20, 1874, is as follows:

"That for the support of the Government of the District of Columbia, and maintaining the credit thereof, for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, there shall be levied on all real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational and charitable purposes, the following taxes, namely." Stat. at large, p. .

The 1st section of Act of March 3d, 1875, was as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the support of the Government of the District of Columbia for the fiscal year ending June 30, eighteen hundred and seventy-six, there shall be levied, upon all real and personal property in said District, excepting only the real and personal property of the United States and that hereinafter stated, a tax of one dollar and fifty cents on each one hundred dollars.

Section 8 of the latter act is as follows:

"That the property exempt from taxation under this act shall be the following and no other, namely; First, houses for the reformation of offenders, alms-houses, buildings devoted to art or belonging to institutions of purely public charity; church buildings, and grounds actually occupied by such buildings; houses to improve the condition of seamen or soldiers; free public library buildings and cemeteries; secondly, the lands or grounds appurtenant to any said house or building, so far as reasonably needed and actually used for the convenient

enjoyment of any said house or building for its legitimate purpose and no other; but if any portion of any said building, house, grounds, or cemetery so in terms excepted is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said buildings or grounds; *thirdly, such property as is now exempt from taxation by the laws of the United States;* fourthly, goods, chattels, and other personal property owned by persons domiciled in said District, but whose legal residence is out of said District, and which property is taxed elsewhere; fifthly, the stock (so far as the individual owner is concerned) of any corporation which is taxed on its capital in said District; sixthly, all property exempt by law from execution, including all libraries or books in use and not held for sale, not over the value of five hundred dollars, and all household, store, shop, or office furniture, or tools, not held for sale, not over the value of five hundred dollars."

There is no repealing clause in the act *of* 1874 *or* 1875, nor any reference to the act of 1873, by which is shown any intention of Congress to repeal or modify the same; therefore if it operates as a repeal of the former act at all, it is by implication.

Although an act may be repealed by implication, yet the law does not favor such manner of repeal, and the subsequent act must be clear and unmistakable in its nature. Nor is it to be allowed unless the repugnancy be quite plain. Although two acts are seemingly repugnant they shall, if possible, have such a construction that the latter may not be a repeal of the former.

Snell vs. *Bridgewater Collar Manufacturing Co.*, 24 Pick., 297;

Commonwealth vs. *Downs*, 24 Pick., 227.

Chief Justice Marshall, in the case of the *United States*

vs. *Fisher*, 2 Cranch, 358, lays down the rule thus, "that when great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain." "When rights are infringed, when fundamental principles are overthrown, when the general system of the law is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."

In the case of *Dash* vs. *Vankleeck*, 7 Johnson, 477, those questions are fully discussed, and the principle is enunciated that laws will not be construed so as to have a retroactive effect, or interfere with vested rights of individuals. And Chief Justice KENT, in addition, says, page 503: "It is a principle of the English law, as ancient as the law itself, that a statute even of its omnipotent Parliament, is not to have a retroactive effect," and cites the leading case in England on the construction of the statute, which enacted that "from and after the 24th of June, 1677, no action should be brought to charge any person upon any agreement made in consideration of marriage, &c., unless such agreement be in writing."

In that case, it was admitted that the promise declared on was of the same kind with those mentioned in the statute, but the court agreed unanimously that the statute was to be read by a transposition of the words; for that it was not to be presumed that the act had a retrospect to take away an action to which the plaintiff was then entitled, and that any other construction would make the act repugnant to common justice.

Gilmore vs. *Shuter*, 2 Showers, 17;
Same vs. *Same*, 2 Mod., 310;
Couch vs. *Jefferies*, 4 Burr., 2,460.
Sedwick on Stat., and Const., Law, 123, 124;
Potter's Dwarris on Stat., 163 note 9 and cases there cited.

It may therefore be laid down as a correct principle of law that a general statute will not be so construed as to affect the right of individuals already accrued, but that as to such individual cases, the courts will so construe the law as to make them exceptions to the general rule.

It may be argued that there is no constitutional prohibition preventing the action of Congress in passing retroactive laws and laws impairing the obligations of contracts; true, but there is a provision in the constitution prohibiting the taking private property without just compensation, and a vested right in property is, in the eye of the law, property. The term property as laid down by Blackstone, includes every species of right in things corporeal or incorporeal. But there is the broad principle which is invariable recognized, even in nations where the sovereign power is supreme, that no injustice will be done to the citizens, and the sovereigns will not be presumed to include in the general laws, cases where they would work a wrong or violate a contract. With these views there can be no difficulty in arriving at a solution of this question.

The complainant had a right vested in him by a law in the nature of a contract, executed on his part and partly so by the District Government when it struck his property from the assessment rolls.

By the original act, the legislature was expressly prohibited from passing any law impairing contracts. (See section 20.) Subsequently Congress passes a general law imposing taxes upon all the property of the District, in general terms.

This would of course include all property subject to taxation, but it would be a forced construction without something more positive and definite than is contained in a general statute, to presume that Congress intended (if it had the power to do so,) to interfere with the vested rights of individuals, or to do that which the legislature

was expressly prohibited from doing in the 20th section of the organic act; that is to impair the obligation of contracts and subject the property of the citizens to confiscation and sale in violation of said contract.

A. L. MERRIMAN,
Appellant's Attorney.

Supreme Court United States.

OCTOBER TERM, 1878.

JAMES S WELCH,
Appellant,
vs.
JOHN F. COOK, *et als.*

No. 91.

BRIEF ON THE PART OF APPELLANT.

P. PHILLIPS,
WM. A. MAURY,
of Counsel for Appellant.

R. O. Polkinhorn, Printer.



Supreme Court United States.

OCTOBER TERM, 1878.

JAMES S. WELCH,
Appellant,
vs.
JOHN F. COOK, *et als.*

No. 91.

BRIEF ON THE PART OF APPELLANT.

Statement of the Case.

On the 26th June, 1873, the legislative assembly of the District of Columbia enacted that, "all property, real and personal, which may hereafter be actually employed within the limits of the District of Columbia for manufacturing purposes, shall be exempt from all general taxes for a period of ten years from the date of this act going into effect; *provided*, that the value of the property so employed for manufacturing purposes shall not be less than $5,000.

By the 4th section of the act of Congress of June 20th, 1874, it is enacted as follows:

"That for the support of the government of the Dis-

trict of Columbia, and maintaining the credit thereof, for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, there shall be levied on *all* real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational and charitable purposes, the following taxes, namely." 18 Stat., p. 117.

And by the 1st and 8th sections of the act of Congress of 3d March, 1875, it is enacted as follows:

"Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the support of the government of the District of Columbia for the fiscal year ending June 30, eighteen hundred and seventy-six, there shall be levied upon *all* real and personal property in said District, excepting only the real and personal property of the United States and that hereinafter stated, a tax of one dollar and fifty cents on each one hundred dollars.

"Section 8. That the property exempt from taxation under this act shall be the following and no other, namely: First, houses for the reformation of offenders; almshouses; buildings devoted to art or belonging to institutions of purely public charity; church buildings and grounds actually occupied by such buildings; houses to improve the condition of seamen or soldiers; free public library buildings and cemeteries; secondly, the lands or grounds appurtenant to any said house or building, so far as reasonably needed and actually used for the convenient enjoyment of any said house or building for its legitimate purpose and no other; but if any portion of any said building, house, grounds, or cemetary so in terms excepted is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said buildings or grounds; *thirdly, such property as is now exempt from taxation by the laws of the United States;* fourthly, goods, chattels, and other personal property owned by persons domiciled in said District, but whose legal residence is out of said District, and which property is taxed elsewhere; fifthly, the stock (so far as

the individual owner is concerned) of any corporation which is taxed on its capital in said District; sixthly, all property exempt by law from execution, including all libraries or books in use and not held for sale, not over the value of five hundred dollars, and all household, store, shop, or office furniture, or tools, not held for sale, not over the value of five hundred dollars." 18 Stat., pp. 501, 503.

On the 25th June, 1875, the appellant filed his bill in the supreme court of the District of Columbia, in which he avers that he owns certain real estate in the District which was at the time of the assessment for the fiscal year of 1874–'75, and is now actually employed for manufacturing purposes, and that the value of the same exceeds $5,000;

That, in pursuance of said act of 26th June, 1873, the said real estate was stricken from the assessment rolls of the taxable property of the District, and no general taxes were levied or assessed thereon for the fiscal year ending June 30th, 1874;

That on the faith of the said act, and the contract therein expressed, complainant expended large sums of money in improving said property and extending his manufacturing facilities since the passage of the act;

That, notwithstanding the said act of 26th June, 1873, the Commissioners of the District have caused said property to be assessed for taxes to the amount of $1,428.30 for the fiscal year ending June 30th, 1875; and that the said property has been advertised for sale, and is about to be sold for payment of the said taxes; and that by this proceeding a cloud has been cast on complainant's title to said property; and the bill prays, *inter alia*, that the defendants be enjoined from selling said property or collecting said tax, and for further relief.

The defendants demurred to the bill, and the cause

coming on to be heard upon the bill and demurrer, the bill was dismissed (Rec., p. 4), and the decree dismissing the bill was affirmed in General Term (Rec., pp. 4 and 5).

Assignment of Error.

The error complained of is the dismission of the appellant's bill.

Argument.

By an act passed the 21st of February, 1871, Congress created the municipality known as the District of Columbia, and vested the legislative power in a legislative assembly (R. S. (D. of C.), § 2, p. 2). By the same act the nature of the legislative grant is thus defined: "The legislative power of the District shall extend *to all rightful subjects of legislation within the District*, consistent with the Constitution of the United States and the provisions of this title, subject to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States" (*Ib.* § 49). And, again, "All acts of the legislative assembly shall at all times be subject to repeal or modification by the Congress of the United States, and nothing shall be construed to deprive Congress of the power of legislation over the District in as ample manner as if this chapter had not been enacted" (R. S. (D. of C.), § 50, p. 6).

That Congress had power to invest the District Government with legislative authority, and that the act of 26th June, 1873, passed by the legislative assembly of the District, was within the powers conferred on that body, are questions which we do not deem it necessary to discuss, supposing them to admit of discussion.

The main question in the cause is, whether the local act of 26th June, 1873, has been repealed by the acts of Congress of 20th June, 1874, and 3d March, 1875, for if those acts do not affect it then it must be still in force.

The continuity of the existence of the municipality known as the District of Columbia, as created by the act of 21st February, 1871, remains unbroken, although some of the features of the municipal government have been changed.

Both of the acts of Congress direct the levy of a tax on *all* real estate in the District, with certain exceptions, which do not embrace the real estate of the appellant. Neither of these acts contains any words of repeal of the local act of June, 1873, or any reference to it whatever. If then the local act is repealed it must be by implication.

But repeals by implication are not favored upon the ground, no doubt, that "it is always to be presumed that the legislature, when it entertains an intention, will express it, and that, too, in clear and explicit terms," (Dwarr., p. 604). In *ex parte* Yerger (8 Wall., 105), this Court said: "Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy; and never, we think, when the former act can stand together with the new acts;" and, again, in *Beals* vs. *Hale* (4 How., 53), "A second law on the same subject does not repeal a former one without a repealing clause or negative words, unless so clearly repugnant as to imply a negative."

Now, inasmuch as holding one law to be repealed by another by implication, carries with it the imputation that the legislature has acted unadvisedly, and involved itself in an inconsistency, it is obvious that the respect due from one co-ordinate branch of the Government to another demands that such a conclusion should not be reached until after every effort to reconcile the two laws has been tried without success. (17 Wall., 436, *State* vs. *Stoll.*)

In the case at bar, the only handle for the contention that the acts of Congress of June, 1874, and March, 1875, are repugnant to the local act of June, 1873, is afforded by the generality of their language in directing a tax to be levied on *all* real estate, and the omission of the appellant's real estate from the property of that kind which is exempted from taxation by those acts.

It will be observed that the local act was intended to foster and promote the manufacturing interests of the District. From the purpose of the act it is to be presumed, conclusively, as against the District authorities, that they intended that citizens in and out of the District should act upon the faith of it, and that it was their hope that the temptation held out by it would be the means of inducing capitalists to embark largely in manufacturing enterprises within the District. Accordingly, the appellant and a number of other persons, who have instituted suits similar to this one, invested money in manufacturing objects, relying upon the promise and inducement held out by this local act.

We do not maintain that the local act involved an irrevocable contract as to the appellant and others who acted on the faith of it, but we do contend that, as to such persons, the act was a *contract*, albeit not of perfect obligation; and that, *in foro conscientiæ*, it would have been a gross breach of faith for the District government to repeal it after the appellant and others had yielded to its inducements. To have done so would have been nothing less than to set a snare. The good faith which the District government owed to those who had changed their condition in consequence of the provisions of the act, was none the less binding in conscience because it was revocable in law.

Therefore, to hold that the acts of Congress have repealed the local act, is to impute to Congress the inten-

tion to commit a breach of faith and make an oppressive and injurious use of its powers. Has the court no alternative by which it may escape the necessity of casting such imputations on the Congress?

It is a settled canon of construction that the general language of a statute may be limited to prevent a reading which would lead to consequences which it is fair to presume were not within the intention of the legislature. The case of *Williams* vs. *Pritchard* (4 T. R., 2), which is very like this case, affords a striking illustration. Parliament authorized individuals to enclose and embank portions of the soil under the river Thames, and declared that such land should be "*free from all taxes and assessments whatsoever.*" The land tax act, subsequently passed, by general words embraced *all the land in the kingdom*, and the question came before the K. B. whether the land mentioned in the former act had been legally taxed, and that court held it had not. The court of K. B. would not deduce from the generality of the language of the second act an intention to violate rights and immunities secured by the first act. As in that case, so in this, generality in the language of the act is not sufficient to warrant the court in giving it an oppressive and unconscionable operation. This court has recognized this canon of construction in several cases. (7 Wall., 486–7, *U. S.* vs. *Kirby;* 4 How., 53, *Beals* vs. *Hale;* 14 Pet., 198, *Brewers' lessee* vs. *Blougher;* 17 Wall., 431, *State* vs. *Stoll.*) In *U. S.* vs. *Kirby*, the Court says: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter." In the *State* vs.

Stoll (*supra*), this Court says: "The provisions of a special charter or a special authority derived from the legislature, are not affected by general legislation on the subject. The two are to be deemed to stand together; one as the general law of the land, the other as the law of the particular case." p. 436. See, also, Sedgw. Const. and Stat. L., pp. 123, 124; 25 Indiana, 165, *Blain* vs. *Bailey;* 21 Pa. St., 37, *Brown* vs. *Commissioners;* 26 Texas, 703, *Ellis* vs. *Botts.* 81 Pa. St., 395, *Rounds* vs. *Waymart Borough.*

But, it may be replied, that the omission of the appellant's land from the property, excepted from the operation of the acts of 1874 and 1875, shows that those acts were intended to operate on it.

The canon, *expressio unius est exclusio alterius*, must always be applied with discrimination, or it may overrule and defeat the intention. Judge STORY refers to it as a maxim "*often incorrectly applied*" (3 How., 313, *ex parte* Christy). Now, we submit that it is only necessary to regard the *character* of the property exempted from taxation by the acts of Congress to be satisfied that it could not have been the purpose of Congress to put an end to the exemption granted by the local act of 1873. The exemptions allowed by the acts of Congress are entirely *gratuitous*, and, to a large extent, such as are to be found in the tax laws of every State in the Union, and may be withheld at any time without involving bad faith or oppression. It would seem, therefore, to be inconsequential to maintain that because the exemption granted by the local act of 1873 is not repeated and enumerated among the gratuitous exemptions of the acts of Congress, the court is at liberty to conclude that Congress intended to involve itself in a breach of faith by taking away that exemption. In a case already referred to (*State* vs. *Stoll*, *supra*), this Court has said that no im-

proper purpose will be imputed to a legislature upon words which are doubtful or obscure (p. 436). In the case of *Rounds* vs. *Waymart Borough* (*supra*), a general law subjecting to taxation all real estate, "*excepting only therefrom* the classes of property specifically exempted from taxation in that law," and repealing "all laws or parts of laws inconsistent with the provisions of this statute," was held not to repeal a previous act not referred to in it, exempting from taxation the property of soldiers in certain cases.

The Remedy.

As this court has been something rigorous in its rulings touching relief in equity against illegal assessments of taxes, it becomes important to show that the case made in the bill falls within some one or more of the categories of jurisdiction under which alone equity can afford a tax-payer relief.

This court has laid down that illegality in a tax alone is not enough to warrant the interference of equity; but that, before the jurisdiction can attach, the illegality must be coupled with some element of fraud, or an imminence of irreparable damage, or a multiplicity of suits, or, where the subject of the tax is real estate, circumstances which make the assessment a cloud on the title, or it must appear that the tax-payer's remedy at law is, otherwise, not plain, adequate, or complete. (11 Wall., 108, *Daws* vs. *Chicago;* 15 Wall., 547, *Hannewinkle* vs. *Georgetown;* 92 U. S., p. 89; *Ib.*, p. 576; 5 Wall., 413, *Ewing* vs. *St. Louis.*)

Undoubtedly, a tax plainly illegal, and so appearing to be on the face of proceedings, which a party claiming through the assessment must always adduce to maintain his title, cannot be a cloud on the title to real estate

upon which the tax was laid, because, in disclosing his title, such party must needs show its entire invalidity. But, it is submitted that equity refuses to give relief in cases of the kind just referred to, because the tax complained of is *plainly* illegal. If, however, the question of illegality is *not plain*, but involves a *doubtful* proposition of law, or hinges upon the uncertain sense of a statute whose meaning is clouded by its words admitting of more than one interpretation, it is conceived that a case is presented for the interference of a court of equity, for it is self-evident that a title discredited by being thrown into such a predicament would never find a purchaser, except upon ruinous terms, and would be rendered practically worthless, unless the cloud thus raised upon it should be dissipated by the decree of a court of equity.

It is submitted that the tax which has been laid on the appellant's land, is not only illegal, but constitutes a cloud on his title for which he has no adequate redress at law, and which can be removed only by the decree of a court of equity.

It is the impairment of the market value, the injury to the *jus disponendi* of real estate by an act which raises doubt and suspicion, although at bottom invalid, that constitutes a cloud on title; therefore, it seems manifest that when relief on this head is sought against an illegal tax, we must view the question of illegality in its relations to some possible treaty for a sale or lease which may be opened between the aggrieved tax-payer and a third person, before it can be determined whether a real cloud on the title has been raised. If, after viewing the question of illegality from this stand-point, the court concludes that it is too doubtful to warrant a court of equity in forcing the title on an unwilling purchaser, then it is clear, to a demonstration, that there exists a cloud on the title, and that a case is presented for the

interference of a court of equity. And the ground on which equity refuses to compel a purchaser to take such a title, is that the party who is, mediately or immediately, the source of the act or proceeding which discredits the title is not a party to the suit, would not be bound by the decree, and might in some subsequent suit succeed in maintaining his pretensions. It is to put himself in a position to enforce the specific execution of any future contract for the disposition of the real estate named in the bill, that the appellant has come into equity to have removed all doubt as to the legality of the tax in question.

Now if the case at bar were before the court on a bill for the specific execution of a contract of sale of the land mentioned in the bill, there would seem to be scarce room for doubt that it came fairly within the principles on which equity refuses relief. A great master of property law has said, that to enable equity "to enforce a specific performance against a purchaser, the title to the estate ought, like Cæsar's wife, *to be free even from suspicion*; for it would be an extraordinary proceeding for a court of equity to compel a purchaser to take an estate *which it cannot warrant to him*" (1 Sugd., B. & P., p. 506, 11 London Ed., 1846). Again, he says: "It hath, therefore, become a settled and invariable rule that a purchaser shall not be compelled to accept a doubtful title," (*Ibid*). And a greater authority has said that "No court of chancery will force a doubtful title on the vendee * * *" (6 Pet., 402, *Watts* vs. *Waddle*). Now a title may be doubtful in a matter of law, as where there is uncertainty as to a general principle of law, or as to the meaning of a statute, or as to the sense of a written instrument, and it may be doubtful upon matter of fact or upon both law and fact. If the doubt is such as that the court cannot feel a confidence that the opinion which it entertains upon it would also be held by any other court

should the question be stirred again elsewhere by the parties not to be affected by its decree, it will not compel the purchaser to take the title. In such a case the House of Lords refuse to lay the doubt by a decision in the absence of the adverse interest. In a leading case, that high Court said: "General opinion is entirely against the title. In this case *it is not necessary to come to any precise decision on the point.* It is sufficient, on the question now before the house, *if the law be doubtful.* A purchaser has a right to require a marketable title; and this title, it must be admitted, *rests on a point of law which, at least, is doubtful.*" (3 Bligh, 71, *Blosse* vs. *Clanmorris.*) The case of the *Earl of Lincoln* vs. *Arcedeckne* (1 Coll. New Cases in Chancery, p. 98), which is strikingly like the case at bar, affords another forcible illustration. That case turned on the meaning of a private act of Parliament authorizing the sale and exchange of the real estate derived by the will of the Earl of Rochford, and for other purposes. The act empowered certain trustees to sell or exchange all or any of the hereditaments named in the schedule to the act, whether of freehold or copyhold tenure. The 3d section of the act contained a clause to the effect that the power of sale and exchange should not extend to certain property including the Manor of Wickham with its members. In the schedule of the act was comprised, amongst others, a farm called the "Mountain Farm." The trustees, in execution, as they conceived, of the powers of the act, having contracted to sell the "Mountain Farm" to the defendant as a freehold estate, he objected to the purchase on the ground, first, that the copyhold tenure had not been extinguished, and, secondly, that whether the premises were freehold or copyhold, yet, inasmuch as they were parcel of the Manor of Wickham with its members, they were expressly excepted out of the power of sale given

by the act. The Vice-Chancellor (Sir Knight Bruce), said: "The question, however, is whether there is ground for grave and reasonable doubt against the vendor's title in this case; and I am of opinion, stating the case most favorably to the vendor, that there is ground for grave and reasonable doubt. Therefore, upon the authority of *Shapland* vs. *Smith* (1 Bro. C. C., 75),, *Jervoise* vs. *Duke of Northumberland* (1 J. & W., 559), and many other cases, it appears to me that I cannot compel the purchaser to take this title." It will be seen, on reference to this case, that although the learned Vice-Chancellor was himself of opinion that the premises in question were excluded from the power, he would not decide the point, as his decree would not bind interests unrepresented in the suit. So, if, *e converso*, his opinion had been that the premises were within the power, he would not have forced the title on the defendant in view of a doubt upon the point. The old rule that the decision of the House of Lords resolving a doubtful point in a title warranted a decree against a purchaser, is no longer law; that high court having, as we have seen (*supra*), refused to force a doubtful title on a purchaser upon the ground that it is against natural justice to establish a *precedent* by a decree which would, in after litigation, conclude a question affecting individuals not parties to the decree, and as to whom the decree would not be *res adjudicata*, and who, if they had been heard, might have brought the House to a different determination. And so it is in nearly every case of specific performance, that the court is powerless to lay the doubts about title which it raises. Thus, in *Pyrke* vs. *Waddingham* (10 Hare, 1), the Vice-Chancellor (Knight Bruce), said, touching a doubt upon the construction of a will: "My opinion, I do not hesitate to say, *is much in favor of the title*, more especially upon the point as to the remainders being con-

tingent; but I find myself unable to base that opinion upon any general rule of law, or upon any reasoning so conclusive as fully to satisfy my mind *that other competent persons may not entertain a different opinion*, or that the purchaser, if compelled to take the title, might not be exposed to substantial and not merely idle litigation, or even *that he would be free from all possible* hazard." p. 10. See, also, 4 Drewry, 330, *Rogers* vs. *Waterhouse*; *Ib.*, p. 352, *Faulkner* vs. *Ex. Rev. So.*; 5 Watts & Serg., 312, *Bumberger* vs. *Clippinger*; 67 Pa. State, 439, *Swayne* vs. *Lyon*; 1 Curt., 479, *Sohier* vs. *Williams*.

Suppose, now, the question of the validity of the tax presented by this case had arisen on a bill for specific performance filed by the appellant against a purchaser objecting to the title on the ground of the lien of the tax, would not this court, as did Vice-Chancellor Knight Bruce in *Pyrke* vs. *Waddingham*, (*supra*), decline to force the title on the purchaser, in view of the doubt about the meaning of the act of Congress, although it might have quite as decided an opinion that the title was a good one as the same learned Vice-Chancellor entertained in the case last referred to. Certainly it is not going too far to say that if, in the case supposed, this court saw that the effect of the acts of Congress on the local act granting the exemption from taxation, admitted of doubt, it would refuse to decide the question in a suit between a vendor and a purchaser to which the District government was not a party, by decreeing against the purchaser. Now it would seem clear that if in the *Earl of Lincoln* vs. *Arcedeckne* (*supra*), the question whether the "Mountain Farm" was outside the power of sale and exchange given by the act, was sufficiently recondite to admit of doubt, the question in this case whether the act of Congress takes away the exemption claimed under the local act is even more recondite, and furnishes

ground for more serious doubt; and all the more serious from the consideration that it is not until the literal sense of the act of Congress is overborne and narrowed by construction that it becomes apparent that the repeal of the local act was not within the intent of Congress; a conclusion which is reached, as we have seen, by making the words of the act yield to its spirit and intent. But, as clear as, in our opinion, the meaning of the act of Congress is, after resorting to construction, is it sufficiently clear to warrant this court in so decreeing as between vendor and purchaser? If not, then the doubt is a cloud upon the appellant's title, and he has vindicated his right to file his bill against the District government, which has raised the cloud, to have that cloud dissipated by a decree.

In not one of the cases in which this court, sitting as a court of equity, has refused to relieve against illegal taxes, did the aggrieved tax-payer set up that the tax complained of was a cloud on his title, the bills in all of them being injunction bills merely.

In the State Railroad Tax Cases (92 U. S., p. 615), Mr. Justice MILLER, after referring to the doctrine laid down in *Dows* vs. *Chicago* and *Hannewinkle* vs. *Georgetown*, says, by the way, "Whether the same rigid rule should be applied to taxes levied by counties, towns, and cities, we need not here inquire; but there is both reason and authority for holding that the control of the courts, in the exercise of power over private property by these corporations, is more necessary, and is unaccompanied by many of the evils that belong to it when affecting the revenue of the State." Now this case falls within the class of cases alluded to in the suggestion thrown out by the learned judge, and affords an opportunity to this court to recognize the jurisdiction of equity to prevent, by injunction, cities, towns, and other local governments from using oppressively their taxing powers.

If, however, we are wrong in the contention that equity has jurisdiction in this case, we, nevertheless, ask the court, in view of the importance of the question involved and of the pending cases which await the decision of this court in the case at bar, to determine the point of the validity of the assessment, and thus put an end to a contention which, otherwise, will be kept up until the decision of this court on the question involved can be obtained in some other proceeding.

P. PHILLIPS,
WM. A. MAURY,
of Counsel for Appellant.

In the Supreme Court of United States.

OCTOBER TERM, 1878.

JAMES S. WELCH

vs.

JOHN F. COOK AND OTHERS.

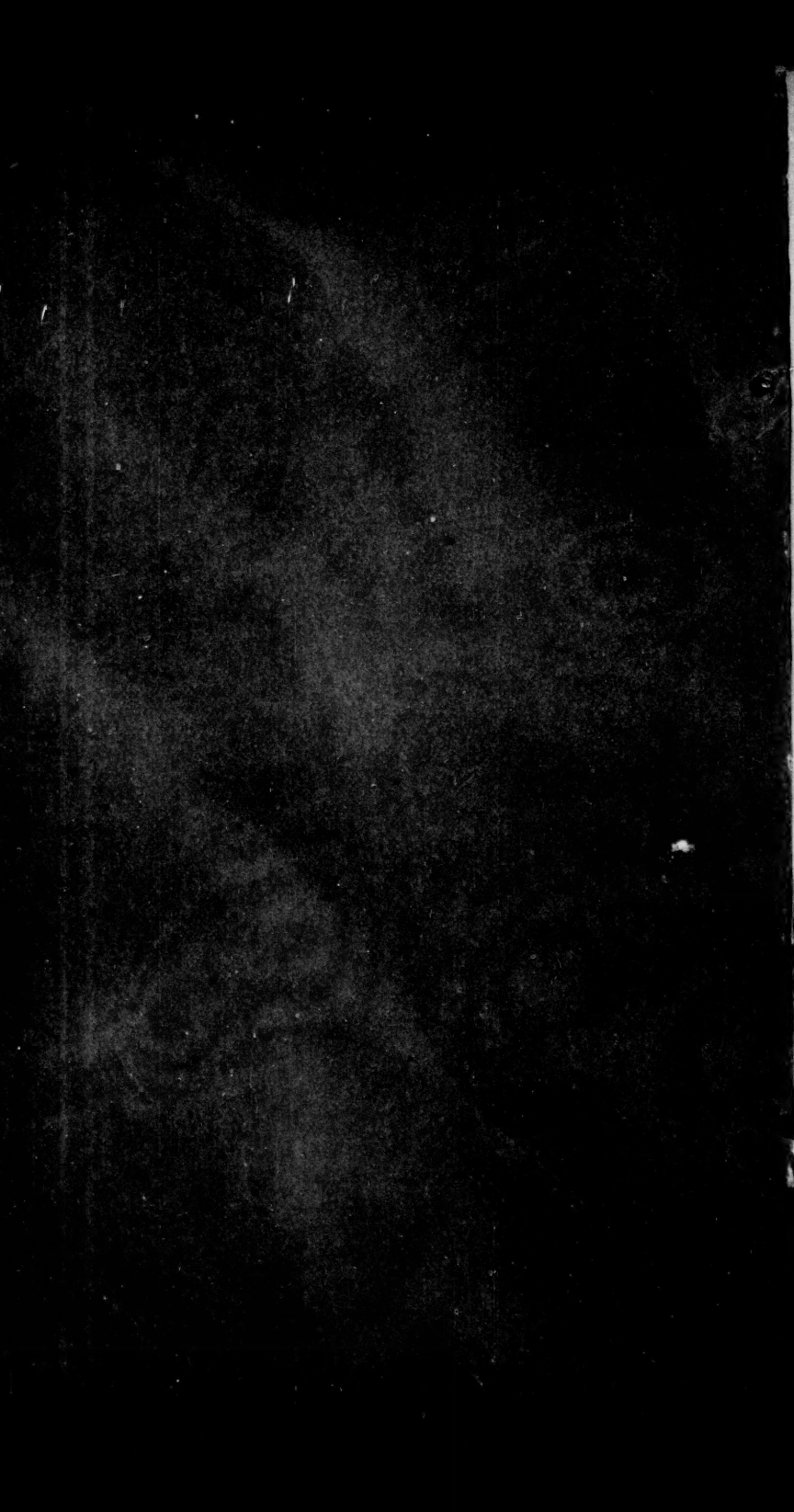
IN EQUITY. No. 90.

On Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE DEFENDANTS.

A. G. RIDDLE,
Attorney, D. C.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1878.



Supreme Court of the United States.

October Term—1878.

JAMES S. WELCH

vs.

JOHN F. COOK AND OTHERS.

In Equity. No. 90.

On Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE DEFENDANTS.

This case may perhaps be regarded as a suit against the District of Columbia, otherwise it has no business to be.

THE CASE MADE.

The bill describes the plaintiff as owner of certain real estate, situate in the District of Columbia, alleged to be used for manufacturing purposes. It is not said to be Georgetown, but it cannot be elsewhere.

Its value is not set forth.

That on the 26th day of June, 1873, the District Legislature passed an act exempting all property, real and personal, used for manufacturing purposes, from general taxation, which is of the value of $5,000.

That the Commissioners of the District, in violation of this statute, assessed said property for general taxes for the year ending June 30, 1875, for the non-payment of which the col-

lector was about to sell the property, and prays for an injunction to restrain him.

To this bill the defendants demurred, of course.

Decree of the court below, sustaining the demurrer. Plaintiff appealed.

Error Claimed.

The court should have overruled the demurrer.

The Law of the Case.

This is a part of the fourth section of the act of Congress of June 20, 1874, as follows: "That for the support of the government of the District of Columbia, and maintaining the credit thereof, for the fiscal year ending June 30, 1865, there shall be levied upon all real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational purposes, the following taxes, namely: Upon all such real estate in the city of Washington, three dollars on each $100 of the present assessed value thereof; upon all such real estate in the City of Georgetown, $2.50 on each $100 of the present assessed value thereof, and upon all such real estate in the District of Columbia, outside of the cities of Washington and Georgetown, $2.00 on each $100 of the present assessed value thereof, which said taxes shall become due and payable on the first day of November, 1874, and if not paid shall be in arrears and delinquent from that date," &c. (18 Stats. at Large, p. 117.)

The act of March 3, 1875, levies a tax for the year ending June 30, 1876, and has no application to the present case.

Remarks.

It is thus seen that the sole law in the case was this statute of June 20, 1874, and it is not made to appear that the Commissioners violated this statute.

The argument is that they followed this act, and disregarded the statute which it repealed.

Aside from the usual difficulty of maintaining a suit in Equity to enjoin the collection of taxes, it is submitted, that upon the showing made by the plaintiff, the decree below must be affirmed.

Respectfully,

A. G. RIDDLE,
Attorney D. C.